

January 17, 2006

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

Appeal

Name of Petitioner: Mack Davis

Date of Filing: October 31, 2005

Case Number: TFA-0130

On October 31, 2005, Mack Davis (Davis) filed an Appeal from a determination issued to him by the Oak Ridge Office of the Department of Energy (Oak Ridge) on October 18, 2005, in response to a request for documents that Davis submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require that Oak Ridge perform an additional search for responsive material.

I. Background

On July 26, 2005, Davis submitted a FOIA request for medical records, radiation exposure records and industrial hygiene records concerning his deceased father, Steve Edward Davis. According to Davis, his father worked at the University of Tennessee (UT) Comparative Animal Research Laboratory (CARL) from 1950 to 1975. Davis contends that his father was exposed to cobalt 60 during an industrial accident at CARL. Oak Ridge searched its records and found an employment card and a security clearance card for Steve Davis. Oak Ridge sent the documents to Davis on October 15, 2005. *See* Determination Letter at 1.

Davis contends that the search was inadequate. He argues that because his father had an annual medical checkup at Oak Ridge National Laboratory (ORNL), his father's medical records and dosimeter records should be on file at ORNL. Letter from Davis to Director, OHA (October 31, 2005) (Appeal). In the Appeal, Davis asks OHA to direct Oak Ridge to search again for responsive information. *Id.*

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Glen Milner*, 17 DOE ¶ 80,102 (1988).

Mr. Davis informed us that his father had been employed by UT and that UT provided Mr. Davis with his father's personnel records. *See* Memorandum of Telephone Conversation between Davis and Valerie Vance Adeyeye, OHA (January 3, 2006). However, UT did not have any medical records. *Id.* According to Davis, in his search for the medical records, Davis was told that they had been sent to Oak Ridge Institute for Science Education (ORISE). *Id.* We contacted Oak Ridge for information about the search. Oak Ridge sent us copies of correspondence and search results from ORNL, ORISE, ORAU, the DOE Records Holding Area for Archived Records, and the Department of Labor (results of their search for records in response to Davis' Energy Employees Occupational Illness Compensation Program Act (EEOICPA) claim). CARL and ORISE submitted an Employment Verification Sheet acknowledging that they searched the available records and were unable to verify the accuracy of the claimed period of employment, but had located a security clearance document from 1950. *See* Employment Verification Sheet (August 3, 2005). ORNL found no record that Davis' father had been monitored there for radiation exposure. *See* Letter from W. Gorman, ORNL, to Amy Rothrock, Oak Ridge (August 22, 2005). DOE Records Holding/Archived Records located a Personnel Clearance Master Card from 1950 and a personnel card. *See* Request Certification and Recommendation (August 23, 2005). ORNL searched but found no medical or industrial hygiene records. *See* Electronic mail message from T. Powers, ORNL, to Amy Rothrock, Oak Ridge (August 25, 2005); Electronic mail message from L. Greeley, ORNL, to Amy Rothrock, Oak Ridge (September 1, 2005). On October 31, 2005, Oak Ridge Associated Universities (ORAU) responded that they had no record of the father's employment.

After reviewing the record of this case, we find that Oak Ridge conducted a search that was reasonably calculated to uncover the requested information. This search included the locations that Davis identified (ORNL and ORISE), but recovered no further responsive material. Accordingly, this Appeal should be denied.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Mack Davis on October 31, 2005, OHA Case Number TFA-0130, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: January 17, 2006